

# SUNNYVALE

*California*

**DATE:** 16 December 2003  
**TO:** Mayor and City Councilmembers  
**FROM:** Trudi Ryan, Planning Officer  
**THROUGH:** Robert LaSala, City Manager  
**SUBJECT:** Letter from Christine Fronczak regarding Building at Wolfe Road and Homestead Avenue

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On December 2, 2003, Christine Fronczak appeared before the City Council regarding the use of the Lee building, located at the corner of Wolfe Road and Homestead Avenue. Christine Fronczak is the President of the Homestead Village Associate, an organization which represents property owners neighboring the Lee's building.

Christine Fronczak provided a timeline of recent activities at the subject site and requested assistance from the City Council on three points, namely:

1. Investigating the Lee's ability to re-apply for a retail permit,
2. Requesting closure of the retail showroom use in the Lee building, and
3. Encouraging the Lees to enforce their parking regulations.

Council directed staff to review the matter and report back. Specific direction included:

- Councilmember Miller requested staff to investigate the issue and to look for possible remedies.
- Councilmember Lee requested clarification on who is responsible for enforcing unauthorized uses of a property.
- Councilmember Hamilton requested clarification on the process for enforcement.
- Councilmember Chu requested confirmation on whether the property owners are required by the previously approved Special Use Permit to restrict evening parking on the site by chaining the lot closed.

## Background

In May 2000, the site was approved for construction of a new office building, with the conditions of approval allowing for limited medical/dental use and

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general office use. In June 2002, the applicant proposed retail and personal service uses on the first floor and medical/dental office use on the second floor; however, the applicant modified their proposal in response to the concerns of the residential neighbors located east of the site. The modified application was approved for general and medical/dental office use for the entire building.

Following initial discussions with a proposed tenant for a kitchen and bath business, on June 17, 2003, staff received a letter describing the proposed business seeking a determination that the use would be determined to be an office type of use. On June 20, 2003, staff sent a letter in response noting that, as proposed, the kitchen and bath business would be considered a retail use and would not be permitted at the proposed location. On June 23, 2003, correspondence was received by the proposed tenant further defining their business and asking reconsideration of the determination that the kitchen and bath business would be considered a retail operation. On July 3, 2003, a business license was issued for kitchen and bath design administrative office. The business license had specified the business as an "Administrative Office". On October 6, 2003, planning staff wrote a letter to the tenant, informing them that the business is a nonconforming use and to remove the showroom function from the premises by October 24, 2003, or face administrative action. Staff also advised the tenant that an application for reconsideration of retail uses may be filed.

On October 24, 2003, the owner filed a Special Development Permit to allow partial use of the site for the showroom. The owner/applicant has indicated that the current proposal for expanded commercial/retail use of the site is due to the economic hardship posed by trying to rent the office space during a depressed economy.

More in-depth background on the subject site is provided in Special Development Permit 2003-0825, which was denied by the Planning Commission on December 15, 2003. The Special Development Permit was pre-appealed to the City Council and is scheduled for the January 6, 2004, meeting.

### **Response to Christine Fronczak Requests**

#### Ability to Re-Apply for a Retail Permit

There is no limit to the number of times that a property owner can apply for changing the use on their site. Nor is there a minimum time frame between applications.

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In the case of the subject site, although the Lees initially applied for retail use on the site in their June 2003 application, they amended their final request to not include retail use. Special Development Permit 2002-0297 for medical and general office uses was approved by the Planning Commission.

#### Closure of the Retail Showroom

As the noncompliant retail use issue at the subject site did not involve a safety concern, the remedy allowed for a public hearing to consider the expanded use of the site. Consistent with general practice, staff allowed the existing use to continue until it could be reviewed in a public hearing. If the application for retail use is denied, then the showroom will be closed down.

#### Enforce Parking Regulations

The Lee property is private property. It is posted with signs indicating that parking is restricted and that unauthorized vehicles will be towed (picture of sign attached). The Lees or their representative may call Public Safety to arrange to have unauthorized vehicles towed. The Lees can authorize the neighboring residents to call Public Safety on their behalf. Similarly, the residents may call Public Safety directly for unauthorized vehicles parked on their property if their property is similarly posted.

In response to complaints from the neighboring residents, Neighborhood Preservation staff sent out courtesy notices to the owner of the SamKee Restaurant regarding the behavior of their patrons in May 2002, September 2002 and February 2003. As the owner of the restaurant could not be held responsible for their patrons, the letters simply requested their assistance in trying to stop their patrons from parking in the Lee building parking lot.

#### **Response to Council Requests**

##### Investigate the Issue / Possible Remedies (Councilmember Miller)

The property owner of the subject site has applied for expanded use for the currently noncompliant retail showroom. Special Development Permit 2003-0825 was denied at the December 15, 2003, Planning Commission meeting. It had been pre-appealed to be heard at the January 6, 2004, City Council meeting.

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Possible remedies include:

- Allowing retail with conditioned use (potentially limiting type of activity, hours, and percentage of building to be used); or
- Not allowing retail use and enforcing closure of the current noncompliant use.

Clarification for Responsibility for Enforcement (Councilmember Lee)

Enforcement of some of the provisions of the Sunnyvale Municipal Code and City mandates are the responsibility of the Neighborhood Preservation Division. The Neighborhood Preservation Division responds to citizen concerns regarding potential nuisance, housing, or zoning code violations. Complaints for noise received during evenings and weekends are investigated by Public Safety.

Clarification of Enforcement Process (Councilmember Hamilton)

The standard Neighborhood Preservation enforcement process includes:

1. Complaint – complaint of violation is reported by public or City staff.
2. Inspection – violation is verified by field inspection, typically within three days of receiving the complaint.
3. Courtesy Notice – A yellow tri-fold notice is given to the property owner giving a brief explanation of Sunnyvale Municipal Code violation(s) and a compliance deadline.
4. Courtesy Letter/Final Notice – A letter explaining the violation(s) and a final compliance deadline is given to the property owner.
5. Administrative Citation, Notice to Abate and/or Compliance – Issued to property owners who fail to meet the required compliance deadline.

As the noncompliant retail use issue did not involve a safety concern, the remedy also allowed for a public hearing to consider the expanded use of the site. Staff allowed the existing use to continue until it could be reviewed in a public hearing.

Requirement to Restrict Evening Parking on Site (Councilmember Chu)

During the June 24, 2002, Planning Commission hearing for Special Development Permit 2002-0297 for the site, two motion attempts were made and rejected to require chaining the parking area at night. No formal requirement exists to chain the facility in the evenings. Apparently, the property owner indicated a willingness to chain the lot; however, this activity has not been consistent.

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Please contact Jamie McLeod at (408) 730-7429 or me at (408) 730-7435 if you have further questions.

Cc: City Clerk  
City Attorney

Attachments: December 2, 2003 Letter from Christine Fronczak  
Picture of parking restricting sign on Lee property

City of Sunnyvale  
City Council Meeting: 12/2/03

Regarding: Lee Dental Building (corner Homestead/Wolfe)

Comments from  
Christine Fronczak  
1691 Nighthawk Terrace  
Homestead Village Association, President  
408-733-8722

1. Beginning **Spring 2000**, members of the Homestead Village Association (HVA) along with neighbors from the bordering residences were actively involved with the City Planning team and Lees in building of dental structure on Homestead/Wolfe. This property closely borders HVA residences (75 to 100 feet from bedrooms). Original project defined to be *mostly office and some dental/medical*.
2. Several meetings in 2001/2002 concluding with **June 2002** Planning Commission meeting where request for *retail permit denied*. New permit for **increased dental/medical usage allowed**. Residents asked for continued support in preventing Samkee restaurant from parking in Dental lot due to *late evening noise violations, garbage dumped onto our properties from Samkee patrons, etc.* Lees were instructed by Planning Commission to replace "screening" along property borders AND continue working with neighbors to ensure a healthy co-existence between the neighbors and the dental building occupants.
3. Initially, Lees enforced their parking restrictions (chained off lot at night to prevent restaurant parking, installed "towing" signage, etc). Within last 6 months, Lees *no longer prevent restaurant usage* which has caused several reports to *Sunnyvale Public Safety* for late night violations, garbage dumping over our walls, etc. Conversation with Mrs. Lee in September asking for her help. She instructed us to "call the police because that's why we pay taxes". If Lees are NOT allowed retail usage, they should NOT be allowing restaurant retail parking.
4. **Spring/Summer 2003**: Extremely noisy construction on Lee property. Work began before 6:00 a.m. and continued until late in the evening (7 days/week). Resulted in several calls to *Sunnyvale Public Safety*.
5. **Fall 2003**: *New Kitchen/Bath showroom* opens on corner of Lee Dental building. Signage on building says "administrative office" but it is a *showroom* (toilets, cabinets, etc are viewable from Wolfe Road).
6. **Late September, 2003**: Contacted City Planning department to ask "how and why" this showroom is allowed.

7. **October 6, 2003:** Received message back from City Planning indicating that Lees have business permit for admin & medical offices only. City Planning department sends letter to Lees and new showroom owners indicating that they will have until October 24 to clear out showroom and cease operation.
8. **October 27, 2003:** City Planning department indicated that they spoke to Lees on Oct 24 and have advised them re-apply for retail usage.
9. **December 15, 2003:** City Planning Commission meeting scheduled.

**Request Assistance from Sunnyvale City Council:**

1. Investigate ability to re-apply for Retail permit. How many times can this happen? Circumstances have NOT changed with proximity to neighbors (insufficient on-site parking with possible spill over into neighborhood, could lead to traffic problems on that corner, retail usage will cause increased impacts to residential neighborhood through longer hours of operation & increased noise and traffic issues). Neighbors are frustrated with seemingly lack of closure on this issue. Detrimental to our lifestyle.
2. Request closure of retail showroom in Lee Dental building ASAP.
3. Encourage Lees to enforce their parking regulations. Disallow Lees from allowing retail restaurant parking in their lot to avoid continual noise violations during evenings. Lees must be held responsible for all dumping and noise disturbances that occur on their property.

**PARKING RESTRICTED  
24 Hrs. A DAY**

Unauthorized vehicles will be...  
**TOWED AWAY**  
At Vehicle Owner's Expense-CVC 22658A

**AUTHORIZED ONLY BY: MANAGEMENT**

Cupertino Towing 446-9292 • S.V.P.D. 730-7110